

## **PUBLIC BODIES APPEAL TRIBUNAL**

**No. D/17 of 2017**

**In the matter of:-**

**Yodhun BISSESSUR**

**Appellant**

**v/s**

**Public Service Commission**

**Respondent**

### **Determination**

This is an appeal from the Director, Valuation Department against the decision of the Public Service Commission (PSC) to retire him in the interest of the public service.

#### **Appellant's Case**

The Appellant's main Grounds of Appeal (GOA) maintained at the Hearing of the case was the one concerning the decision of the Public Service Commission as per letter dated 9 August 2016 to retire him in the public interest.

He gave up his second Grounds of Appeal. He claimed that

- (1) There was no fair hearing within a reasonable time as the investigation had started on 29 June 2011 and proceedings by the Public Service Commission started on 27 March 2012. He stated that this was "*unconscionable*,

*unacceptable and oppressive*” because of the *“inordinate delay”* for charges which dates back to 2006.

(2) He stated that *“in view of my re-instatement by virtue of a letter dated 13<sup>th</sup> March 2015 – putting an end to an interdiction which started as from 29<sup>th</sup> June 2011”*, the public authorities should not *“deal with me in any way whatsoever.”*

(3) He also stated that the retirement was *“wrong on facts and in law, in abuse of process, manifestly harsh and excessive, discriminatory, in abuse of my rights to legitimate expectation to be treated in a fair and reasonable manner, so that the decision is unfair, unreasonable ...”* He referred to evidence adduced in reply to the letter sent by the Responsible Officer and to the 7 charges before the Disciplinary proceedings.

He mentioned the fact that he had submitted documents regarding the allegations of *“alleged illegal practice as Chief Government Valuer (CGV) namely the conduct of valuation exercises for the benefit of parastatal bodies and private individuals”*.

(4) He referred to the disciplinary proceedings and stated that these were unfair.

(5) He averred that the non communication of the rulings and findings of the Board was unfair and in breach of natural justice.

(6) He explained that he had been charged before the Intermediate Court for issues where he pleaded not guilty and is awaiting judgement. Yet the Disciplinary proceedings were maintained in spite of Part IV of Public Service Commission Regulations.

(7) He stated that even after his interdiction, authority to proceed with the same practice has not been revoked but has been maintained... and referred to the Human Resource Management Manual (HRMM).

(8) He averred that “*the said proceedings are in abuse of process*” in as much as:

“(i) *Action has not been stayed pending determination of the PBAT, in that the decision of the PSC and the Ministry of Finance is subject to adjudication by the PBAT. (Letter annexed);*

(ii) *The conduct of the authorities was biased in that my entitlements were curtailed to my prejudice before I was heard, at the time of the inquiry and before any ruling on charges*

(iii) *“It is to my knowledge and belief that the RO, as officer in charge, did rightly request the PSC to discontinue the proceedings, and the PSC wrongly refused to do so.”*

He filed the letter from the Financial Secretary (FS) dated 9 August 2016 which was communicated to him to inform him that “*the Commission has considered the report of the Committee of Inquiry appointed under regulation 37 of the Public Service Commission Regulations to inquire into the seven charges preferred against you on 29 June 2011 and is satisfied that the seven charges have been proved.*”

The Financial Secretary informed him that it had been decided that he “*should be retired forthwith in the interest of the public service and your retiring benefits shall be reduced in an amount as may be approved by the Ministry of Civil Service and Administrative Reforms.*” The retirement was to take effect from 15 June 2017. He was informed of the different leaves “*standing to your credit as leave prior to retirement to be spent overseas or locally as from Thursday 11 August 2016*”.

In his Statement of Case (SOC) he explained that the Head of the Valuation Department has always carried out valuation of properties for parastatal and government owned entities in an official capacity.

He explained that it is not in his scheme of duties to carry out valuation of properties for the Registrar General's Department, which task is attributable to Valuation Officers of the department.

When Appellant joined the service he dealt with ongoing files from his predecessors in matters of valuation of parastatal or government owned entities against payment. When he assumed duty he requested for "formal covering authority" which was given on 7 June 2006.

He also stated that there was no absolute prohibition that he should discontinue the tasks already undertaken in those circumstances.

The Appellant stated that the "*singling out of the Appellant amounts to discrimination and it occurred at a time where there was an outcry of private practitioners and the opposition in Parliament against the acquisition of Medpoint Hospital upon valuation conducted by Appellant's office*" i.e that Disciplinary Proceedings were set up under political pressure.

He stated that the "*Hansard*" confirms that the then Minister of Finance made a Statement confirming that Appellant was entitled to carry out practice against remuneration and there was no illegality. Proceedings were set up after the Minister's resignation.

The Appellant carried out valuation that was not in conflict with the Appellant's Scheme of Duties and a Conflict Management Unit, on the model of the Royal Institute of Chartered Surveyors, was set up to deal with any conflicts.

He then stated that valuation exercises were also carried out for “*non-governmental bodies and individuals who had dealings that affected statutory corporations and parastatals.*”

He stated that “*it is the practice of public bodies to seek and obtain the services of officers, public or private, inter alia for valuation work, as extra duty, or authorised work against payment. The Appellant avers that payments for such work are effected by cheque addressed to the officer authorised by way of his status and responsibility, and in the present case, to the CGV*”

He cited Section 11 of HRMM “*which allows an officer to carry out private work subject to only two conditions: 1. Work is carried out outside office hours and 2. Work does not conflict with the office of the post of the officer.*”

The Appellant averred that “*Since valuation work carried out for parastatal bodies is not found within the schedule of duties of the Valuation Department, authorised officers are entitled to remuneration for the said valuation work, paid by the relevant parastatal bodies*”.

He stated that between June 2006 and June 2011 he carried out valuation for the Mauritius Ports Authority (MPA) and Business Park of Mauritius Ltd. (BPML) as per established practice in the valuation department.

All sums of money concerning these valuations paid “*as a result of the above exercises have always been payable and were indeed paid to the satisfaction of one and all at all relevant times and in particular as regards the Appellant since 2006.*”

There has been no adverse comments by the Internal Auditor or National Audit Office on sums paid by MPA.

In reply to the letter of 29 June 2011 from the Financial Secretary, the Appellant replied and disclosed the following:

- a. *That he had complied with S11 HRMM;*
- b. *That none of these personal assignments were in conflict with the Appellant's office;*
- c. *The cases mentioned in the Statement of Charges had already been investigated by the ICAC the previous year and no case of conflict of interest or malpractice had been found;*
- d. *The Appellant's predecessors, namely Mr Y. Coret, Mr. N. Dilmohamed, Mr G. Saddul and Mr P. Ramrekha, operated in a similar way without any objection from the Ministry;*
- e. *Other junior officers were always authorized formally and informally, to carry out such practice;*
- f. *The abovementioned officers have not been subject to disciplinary proceedings, interdiction, or punishment;*
- g. *Such practice was with the ultimate objective of giving added service to the public in line with the PRB report 2008, para 18.7.9, HRMM;*
- h. *Such practice has been applied with manifest consistency, without any reservation, nor any notice of reconsideration or reversal of policy, nor with any adverse report from the PRB towards change of policy;*
- i. *At any rate, the Appellant was not aware of any change of policy, whether by formal or informal sources.*

Appellant stated that *"by a letter dated 27<sup>th</sup> March 2012, the PSC informed the Appellant that it 'is of opinion' that disciplinary proceedings should continue and that a Committee of Inquiry had been appointed to enquire into the matter."* The said letter did not refer to any report from the Responsible Officer.

He averred that the PSC has not complied with Regulation 37 which protects Appellant against arbitrary, frivolous and unwarranted exposure to unnecessary risks and jeopardy. The discretion was wrongly exercised, unfair and unreasonable.

On 15 January 2015 the Appellant wrote to the Financial Secretary requesting him to review his decision of instituting disciplinary proceedings against the Appellant on the basis of further information provided by the Appellant to the effect that he had indeed obtained a letter of authority for the same practice, a matter that was not clear during preliminary investigation and which authority allowed for same practice as the Appellant's predecessors.

On 13 March 2015, "the Appellant was informed by the Financial Secretary that, with the concurrence of the PSC, he decided to reinstate the Appellant to his post of Director, Valuation and Real Estate Consultancy Services with effect from 29 June 2011 and the Appellant was requested to resume duty on 17 March 2015.

On 18 March 2015 the Financial Secretary informed him that disciplinary proceedings would follow its course as directed by the PSC despite the fact that the new Financial Secretary had written to the Public Service Commission to request that proceedings be stayed.

Appellant averred that the PSC encroached upon the right of the Financial Secretary who was the initiator of proceedings which was "abusive and wrongful." It acted "in excess of its statutory powers."

The Commission of Inquiry sat from 12 April 2012 to 16 October 2015 due to several postponements. After 4 years on or about July 2016 the Commission of Inquiry submitted its report to the PSC despite the fact that Appellant had resumed duty.

The Appellant further stated that:

*“On 10 August 2016 Appellant was informed by the Financial Secretary that he was directed by the PSC to inform the Appellant that the Commission was satisfied that the seven charges against the Appellant had been proved and the Appellant should be retired forthwith in the interest of the public service with reduced retiring benefits and unilaterally.*

*On 16 August 2016, he wrote to the Financial Secretary requesting him to stay execution of the decision of the PSC as employer pending the full and final determination an appeal by the Appellant pending determination of same.*

*On 23 August 2016 the Financial Secretary informed the Appellant that, as Responsible Officer, he has no authority and cannot interfere in whatsoever manner over the decision of the Commission and refused to stay action.”*

The Appellant averred that he had been performing his duties with serenity believing that all proceedings had *“been discontinued or had lapsed”*.

The Appellant averred that the *“inordinate delay”* caused him prejudice *“in a discriminatory manner where other predecessors were spared from similar humiliation and sanction.”*

That the decision to retire him *“is wrong on facts and in law, in abuse of process, manifestly harsh and excessive, discriminatory, in abuse of the Appellant’s rights to legitimate expectation to be treated in a fair and reasonable manner, so that the decision is unfair and unreasonable.”*

The Appellant finally averred that *“he was never invited to make any representations before any harsh action was taken against him”* and that <<

<<(i) *He acted in good faith at all material times*

(ii)*He has a family to support;*



- (iii) He had never had any adverse report in performance of his duties;*
- (iv) He never challenged the authority of his superiors;*
- (v) He has not reached retirement age;*
- (vi) He was reinstated and delivered satisfactory work;*
- (vii) The case for the Prosecuting Authority was doubtful and the Appellant should have been given the benefit of the doubt on a balance of probabilities;*
- (viii) The pain inflicted is inhuman, excessive and disproportionate.>>*

He then prayed

- << i that the Tribunal uses all its powers as conferred under Section 7 and 8 of the Public Bodies Appeal Tribunal Act 2008, to allow the Appeal of the Appellant by making such orders as are appropriate in the circumstances as justice of the case demands, and that the disciplinary action be quashed as being unfair, unreasonable and manifestly excessive;*
- ii. That all documents be made available for the hearing and determination of the present appeal.>>*

### **Respondent's Case**

The Respondent in its Statement of Defence stated that

1. The Valuation Department (VD) falls under the aegis of the Ministry of Finance and Economic Development.(MOFED)
2. The Appellant as Head of the VD was accountable to the Financial Secretary and was responsible for the management of the VD.

3. (i) The Respondent admitted that appellant sought the approval of the MOFED to carry out valuation for parastatal and non-government bodies against remuneration and that  
(ii) The Financial Secretary informed Appellant that there was no objection to the above *“provided that such assignments would not conflict with the interest of the office of his post and should be carried out outside normal working hours.”*
4. Respondent denied that Appellant was being discriminated upon.
5. Regarding the HRMM, Respondent stated that paragraph 2.11.1 holds that *“the whole time of an officer should be at the service of the Government and he is not permitted to undertake private work for reward except as provided at paragraph 2.11.12 of the HRMM.”*

Paragraph 2.11.2(1) of the HRMM *“specifically provides that an officer may, subject to the approval of his Supervising Officer, be exceptionally authorised to undertake his private work, where the work –*

*(a) is performed outside official working hours; and*

*(b) has no adverse effect on his official position or duties.”*

Paragraph 2.11.2(2) *“provides that where the work involves trading or commercial activities, the approval of the Secretary to Cabinet and Head of the Civil Service should also be obtained.”*

6. The Respondent stated that

*“ (i) The Independent Commission against Corruption (hereinafter referred to as “ICAC”), in a letter dated 5 April 2011, informed the Responsible Officer of the Ministry of Finance and Economic Development that, following an*

*investigation instituted by the aforesaid Commission in connection with the purchase of Med Point Hospital, Appellant, inter alia, had been arrested and provisionally charged before the District Court of Rose Hill for “Public Official using office for gratification”;*

*(ii) A preliminary investigation was carried out at the level of the Ministry of Finance and Economic Development to enquire into allegations made by a group of Private Valuers regarding a case of conflict of interest involving Appellant and following the reply made by the Vice Prime Minister and Minister of Finance and Economic Development to an additional question in relation to a Private Notice Question during the sitting of the National Assembly on 17 May 2011;*

*(iii) ...it was established that there were grounds to conclude that Appellant had been involved in valuation exercises in his personal capacity regarding valuation of properties where there was allegedly one case of conflict of interests and that he had authorised his subordinates to submit claims to organisations for private services.”*

7. The Respondent further stated that despite the fact that the authority conveyed to Appellant made provision for “valuation of properties of parastatal and non governmental bodies”, Appellant carried out valuation for private individuals mainly Dr Sohun.

8. “Appellant carried out valuation for disposal purposes, in breach of his letter dated 29 May 2006 and the authority given to him on 7 June 2006, which constitutes a case of conflict of interest with his position of Director, Valuation

*and Real Estate Consultancy Services, (Cases of Dr Sohun, and Business Parks of Mauritius)'*

*Appellant carried out private work on Government premises, in breach of section 11 of paragraph 2.11.4(1) of the Human Resource Management Manual;*

*Appellant used the official address of the Valuation Department for his private work, in breach of section 2.11.4(2) of the Human Resource Management Manual;*

*Appellant had claimed fees for a private work performed as from 1 June 2006 for the Mauritius Ports Authority, prior to authority being given to him on 7 June 2006;*

*As head of the Valuation Department, Appellant authorised his subordinates to submit claims to organisations for private services provided with mention that payments should be made on his behalf, and*

*Appellant failed in his duties of head of Valuation Department by delegating the authority given to him to perform private work to at least two officers of the Valuation Department, namely Mr Jeebodhun and Mr Jeetun."*

9. Appellant did not furnish any explanation within the delay given to him to answer the 7 charges preferred against him (as detailed at above paragraph 7 and 8) but did so afterwards on 28 July 2011. The Responsible Officer was dissatisfied with the representations and reiterated to Respondent his recommendation that disciplinary proceedings be instituted against Appellant.
10. Respondent admitted that by a letter of 27 March 2012 it informed Appellant that it had decided that a Commission of Inquiry be set up to investigate into

the matter and it had requested for a Magistrate to chair the Committee. It also informed the Responsible Officer accordingly.

11. Respondent averred that it has no legal obligation to inform an officer of any report made by a Responsible Officer.

12. Respondent averred that it had complied with Regulation 37.

13. Respondent averred that

*“(i) by letter dated 04 February 2015, the Responsible Officer, inter alia recommended that the disciplinary proceedings instituted against Appellant be discontinued forthwith and the latter be reinstated in his post of Director, Valuation and Real Estate Consultancy Services;*

*(ii) by letter dated 11 March 2015, Respondent conveyed its approval for the reinstatement of Appellant with effect from 29 June 2011 but informed the Responsible Officer that disciplinary proceedings against Appellant be continued. The Responsible Officer was also requested to inform Appellant accordingly.”*

14. Respondent averred that the Responsible Officer can only make recommendations to it and it is empowered to appoint and take disciplinary sanctions against a public officer.

15. The Committee of Inquiry submitted its findings on 23 June 2016.

16. The Respondent averred that

*“(i) having considered all the facts and circumstances of the case and the report of the committee of Inquiry, it was satisfied that the seven*

*charges preferred against Appellant have been proved and informed the Responsible Officer on 04 August 2016 accordingly.”*

- (ii) And that *“it also informed the Responsible Officer that it has considered the punishment to be inflicted upon Appellant and had decided that the latter be retired forthwith in the interest of the public service, after the grant to him of any leave for which Appellant may be eligible. The Responsible Officer was also informed that the retiring benefits payable to Appellant should be reduced in an amount as may be approved by the Ministry of Civil Service and Administrative Reforms;”*
- (iii) It informed Appellant on 15 June of its decision and that his retirement will take effect from 15 June 2017.

17. Respondent stated that it had acted fairly and in accordance with the law, whilst following the required procedures.

18. Respondent explained that Appellant was duly represented before the Commission of Inquiry and was therefore aware that proceedings were still pending against him and he had full opportunity to defend himself.

19. Respondent stated that *“in view of the high position and functions held by the Appellant, the fact that Appellant should have demonstrated a high degree of professionalism and integrity and not brought the public service into disrepute through his acts and doings, it found it fair and proportionate to retire Appellant forthwith in the interest of the public service.”*

20. Respondent averred it was under no obligation to stay action.

21. Respondent finally averred that “*the decision to take any punishment against Appellant is solely attributable to Respondent, which it did after taking cognizance of the report of the Committee of Inquiry, the circumstances of the case and in accordance with the provisions of the law.*”

## Determination

The important dates and parameters of the appeal are as follows:

- (i) 29 June 2011      The Financial Secretary, who is the Responsible Officer (RO) for the Government Valuation Office, informed the Appellant of the intention to initiate disciplinary action under PSC regulation 37.
- (ii) 4 February 2012      The Responsible Officer (RO) had written to the Respondent and recommended that the disciplinary proceedings instituted against the Appellant be discontinued forthwith and the latter be reinstated in his post of Director, Valuation and Real Estate Consultancy Services (formerly Government Valuation Office)
- (iii) 27 March 2012      Respondent started disciplinary proceedings against the Appellant
- (iv) 13 March 2015      The Appellant was re-instated to his post of Chief Government Valuer (CGV)
- (v) 28 October 2015      Last day of Hearing of disciplinary committee
- (vi) 22 June 2016      Date of submission of report of disciplinary committee to Respondent
- (vii) 9 August 2016      The Appellant received a letter from his RO informing him of his retirement on 15 June 2017 in the public interest and such retirement would take effect, after **he had availed** of his leave entitlement,

Since the issue is related to the officer doing private work ,the Human Resource Management Manual (HRMM) 2011 has this to say at page 72: “ *An officer may , subject to the approval of the Supervising Officer, be exceptionally authorized to undertake private work, where the work –*

- (a) *Is performed outside official working hours; and*
- (b) *Has no adverse effect on his official position or duties.”*

With reference to Appellant’s grounds of appeal, the Appellant has maintained only the first limb of his appeal where the Appellant is contesting his retirement in the public interest. This decision being a final decision, the Tribunal has jurisdiction to hear the matter. It is apposite to note that “*retirement in the public interest*” in the PSC

Regulations has been replaced by “ *retirement in the interest of the public service*” as per the revised Regulation 39. Be that as it may, this is a case of retirement following disciplinary proceedings under PSC regulation 37. The decision to institute disciplinary proceedings was first intimated to the Appellant by the RO in a letter dated 29 June 2011 and also informing him of his interdiction from office. It was only on 27 March 2012 that the Respondent started the process, that is nine months later. It was explained that this was because Appellant and the RO were having discussions on the charges and his request for retirement .On 27<sup>th</sup> March 2012 the Appellant was informed by Respondent that the disciplinary proceedings will continue. The disciplinary committee took a long time to finalise its report. According to PSC regulations the disciplinary committee had 14 days to complete its report after completion of the proceedings. It is also said that the disciplinary committee must forward its report to the Commission “*as far as is reasonably practicable, within a period not exceeding 6 months as from the date of its appointment*”. The Tribunal notes that the report of the disciplinary committee was submitted after hearing was completed on 28 October 2015, i.e. after more than three and a half years after it commenced hearing the case. This was followed by the decision to retire the Appellant conveyed in the letter 9 August 2016.

The Tribunal was told that the delay encountered by the disciplinary committee was due to the predicament of one of the member of the committee. The Tribunal understands that a member of a disciplinary committee may have difficulties and in this case these were genuine. But had it not been better for the Respondent to move for the replacement of the said member? Is justice delayed justice denied? The Tribunal will address this point now.

The first delay happens when the RO wrote to the Appellant on the 29 June 2011 informing him of his intention to take disciplinary proceedings against him and the time that the Respondent started such proceedings on 27 March 2012. The Tribunal was told that there were discussions and exchanges between the Appellant and the RO on the



charges and his request for retirement. When the Appellant received the letter from the RO he was on leave and he asked for more time to file a reply. As Respondent itself conceded, the RO had written to the Commission on 4 February 2012 on the matter and recommended discontinuation of disciplinary proceedings but the Commission did not agree and started disciplinary proceedings. This initial nine month delay is the result of Appellant's own initiative.

From February 2012 onwards there were further delays.

The Appellant referred to the disciplinary proceedings which he considered unfair. He averred that the non-communication of the rulings and findings of the Committee of Inquiry was unfair and in breach of natural justice. The Tribunal must state clearly that it cannot substitute itself for the Committee of Inquiry. In Ruling 10 of 2013 which is available in full on the PBAT website, the Tribunal ruled as follows:

*"It is clear that this Tribunal is concerned with decisions of public bodies and not any Committee or organ which reports to the public body. The latter must be able to assume full responsibility for any decision it makes, even though this is based on a finding of fact of an enquiring officer or Committee nominated to look into the matter. The public body does not remain completely neutral nor accept a report without question."* We will reiterate this principle here, which is why we requested for the notes of meeting of the said Committee and also listened fully to the Appellant. But, as per the PBAT Act, we are concerned only with the final decision of the Respondent.

The Respondent did provide the transcript of proceedings of the Committee to us under confidential cover, as well as the documents produced. Nothing seemed unfair or unreasonable except the fact that the proceedings started in 2012 and took almost 4 years.

The salient issues that the Appellant raised are as follows:

- (1) There was an unofficial authorisation for the Chief Government Valuer to do valuation work for bodies not covered under the Scheme of Service. Valuation done for parastatals and government- owned bodies was done on request and those who did the valuations were paid for this. As a result his predecessors had done such assignments .For private work the authorisation of the RO was required. Appellant had applied to the RO to perform valuation duties for parastatals and private valuation for non-government bodies and same was granted to him in a letter dated 7 June 2006. He did it to get official authorisation instead of the unofficial agreement that prevailed for his predecessors. Respondent had averred that the Appellant had claimed fees for private work performed as from 1 June 2006 for the Mauritius Port Authority prior to authority given to him on 7 June 2006. He also did work for one Mr Sohun which was a case of conflict of interest as Director, Valuation and Real Estate Consultancy Services
- (2) The Appellant averred that he had a right to private work as per the HRMM, provided it met the conditions
- (3) The Appellant averred that the charge of illegal practice of doing valuations for parastatals and private individuals was the same as that which was before the Court and for which a judgment was still awaited. This was according to him a duplication of disciplinary proceedings
- (4) The Appellant stated that even after his interdiction the authority to proceed with such private work was not revoked, but had been maintained in pursuance of the HRMM and in the public interest

His case is that he had authority to do "private work" and had only continued what his predecessors did.

The Appellant tendered several documents which relate to his Statement of Case but was unable to file certain documents specially the one which relate to the work which he averred that his predecessors did.

He was also unable to prove that his successor Mrs Roshnee Bissessur was actually carrying out such private work. The Respondent replied to our question on Ms Bissessur as follows: "...this Ministry is not aware that Mrs Roshnee Bissessur is performing private practice" and that no authority has been issued to her to perform private work.

These points were, however, before the disciplinary committee and were adequately thrashed out.

The Appellant further averred that action was not stayed pending the decision of this Tribunal. The Tribunal finds nothing wrong in this. The decision to appoint and terminate appointment is vested in Respondent as per section 89 of the Constitution. The Respondent cannot be debarred of its prerogative by the mere fact that an appeal is before this Tribunal but, as has been stated before, it does so at its own risk, knowing that there is a case pending before the Tribunal.

The Appellant deplores that his entitlements were curtailed before he was heard, at the time of the enquiry and before any ruling on the charges was given. The Tribunal cannot adjudicate on this issue which falls outside its jurisdiction.

Apart from the long delay discussed above before action was taken to retire the Appellant, there were other things happening concurrently with this disciplinary enquiry which are:

- (1) The Independent Commission against Corruption (ICAC) had informed the RO that following an investigation by that Commission in connection with the purchase of Med Point Hospital, Appellant, inter alia, had been arrested and

provisionally charged before the District Court of Rose Hill for “Public Official using office for gratification”

- (2) Following allegations from a group of private valuers and a reply to a question in the National Assembly on 17 May 2011, there was a preliminary investigation at the level of the Ministry of Finance and it was established that there were grounds to conclude that Appellant did work in his personal capacity and there was allegedly a case of conflict of interest
- (3) The Respondent averred that Appellant was doing work on Government premises in breach of the HRMM and used the official address of the office for his private work. Appellant authorised his subordinates to submit claims to organisations for private work provided with mention that payment should be made on his behalf. The Appellant had failed in his duty as Director by delegating the authority given to him to perform private work to at least two officers of the Valuation Department.

In addition to things that were cropping up at the same time there were delays as additional information were sought for by the disciplinary committee and there were postponements, including requests for same by the representative of the Appellant himself. The Tribunal was given the list of sittings and postponements of the disciplinary committee from the first meeting on 12 April 2012 to the last hearing on 28 October 2015. It notes the large number of postponements due to Counsel for both parties not being available, time required to study new documents, absence of witnesses and the unfortunate health situation of one member of the committee. The report was submitted to the Respondent on 23 June 2016.

The Tribunal concludes that the delays in the disciplinary proceedings were due to reasons which were known to the parties. The Appellant and his Counsel participated all the way in the disciplinary proceedings and did not protest that it was taking too long.

The Appellant's Counsel has filed a copy of the Supreme Court Judgement (2017 SCJ 99) (Sateeyam Ramruttun v 1. The Minister of Public Infrastructure and Land Transport 2. The National Transport Authority 3. The Director General of the Mauritius Revenue Authority). This judgement does not help him concerning the issue of delay as the judges held in that case that in addition to the long delay there were other reasons that delayed the determination of the case.

The Appellant averred that one of the member of the disciplinary committee was junior in rank to him and referred to PSC regulation 37(3) (c) that "all members shall be selected with due regard to the status of the accused officer". The Tribunal does not follow the Appellant on that line. This proviso does not state specifically that a member must be of a higher rank but must be of an adequate level with due respect to the accused officer. He filed a document concerning Performance Management in the Civil Service which cannot be compared to the disciplinary proceedings which was chaired by a President of the Intermediate Court (Civil Division). In this case, the member he was putting in question was a Principal Engineer and can be considered to be somebody of standing to fit the rank of the Appellant. In any case the Appellant never put in question the composition of the disciplinary committee at the time.

It is noted that the Respondent has decided to retire the Appellant and allowed him to avail of all his retirement benefits. The Respondent could have applied the harsher sanction of dismissal.

Disciplinary proceedings were taken against the Appellant under PSC Regulations. He was heard by a Disciplinary Committee duly constituted and he had the opportunity to exculpate himself. He was represented by Counsel before the Disciplinary Committee. His termination of employment was following the report of the Disciplinary Committee which does not seem to have gone outside its mandate. The Respondent has followed the PSC Regulations.

The Tribunal finds that the appeal has no merit.

The appeal is set aside.

**S. Aumeeruddy-Cziffra (Mrs)**  
Chairperson

**G. Wong So**  
Member

**P. Balgobin-Bhojrul (Mrs)**  
Member

**Date:** .....

**Note:** This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. The Supreme Court upheld the Determination of the Tribunal which has now become final.